

By: Smithee

H.B. No. 3

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the operation and name of the Texas Windstorm Insurance
3 Association, to the resolution of certain disputes concerning
4 claims made to that association, and to the issuance of windstorm
5 and hail insurance policies in the private insurance market by
6 certain insurers; providing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 83.002, Insurance Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) This chapter also applies to:

11 (1) a person appointed as a qualified inspector under
12 Section 2210.254 or 2210.255; and

13 (2) a person acting as a qualified inspector under
14 Section 2210.254 or 2210.255 without being appointed as a qualified
15 inspector under either of those sections.

16 SECTION 2. Section 541.152, Insurance Code, is amended by
17 amending Subsection (b) and adding Subsection (c) to read as
18 follows:

19 (b) Except as provided by Subsection (c), on [On] a finding
20 by the trier of fact that the defendant knowingly committed the act
21 complained of, the trier of fact may award an amount not to exceed
22 three times the amount of actual damages.

23 (c) Subsection (b) does not apply to an action under this
24 subchapter brought against the Texas Windstorm Insurance

1 Association.

2 SECTION 3. The heading to Chapter 2210, Insurance Code, is
3 amended to read as follows:

4 CHAPTER 2210. TEXAS COASTAL [~~WINDSTORM~~] INSURANCE PLAN
5 [~~ASSOCIATION~~]

6 SECTION 4. Section 2210.002(a), Insurance Code, is amended
7 to read as follows:

8 (a) This chapter may be cited as the Texas Coastal
9 [~~Windstorm~~] Insurance Plan [~~Association~~] Act. A reference to the
10 Texas Windstorm Insurance Association Act means this chapter.

11 SECTION 5. If S.B. No. 652, Acts of the 82nd Legislature,
12 Regular Session, 2011, becomes law, Section 2210.002(b), Insurance
13 Code, as amended by that Act, is amended to read as follows:

14 (b) The association is subject to review under Chapter 325,
15 Government Code (Texas Sunset Act), but is not abolished under that
16 chapter. The association shall be reviewed during the period in
17 which state agencies abolished in 2015 [~~2013~~] are reviewed. The
18 association shall pay the costs incurred by the Sunset Advisory
19 Commission in performing the review of the association under this
20 subsection. The Sunset Advisory Commission shall determine the
21 costs of the review performed under this subsection, and the
22 association shall pay the amount of those costs promptly on receipt
23 of a statement from the Sunset Advisory Commission regarding those
24 costs. This subsection expires September 1, 2015 [~~2013~~].

25 SECTION 6. Section 2210.003(1), Insurance Code, is amended
26 to read as follows:

27 (1) "Association" means the Texas Coastal [~~Windstorm~~]

1 Insurance Plan Association.

2 SECTION 7. Section 2210.003, Insurance Code, is amended by
3 adding Subdivision (3-b) to read as follows:

4 (3-b) "Catastrophe year" means a calendar year in
5 which an occurrence or a series of occurrences results in insured
6 losses, regardless of when the insured losses are ultimately paid.

7 SECTION 8. Section 2210.009(a), Insurance Code, is amended
8 to read as follows:

9 (a) The department shall maintain a list of all authorized
10 insurers that engage in the business of property and casualty
11 insurance in the voluntary market in the seacoast territory.

12 SECTION 9. Subchapter A, Chapter 2210, Insurance Code, is
13 amended by adding Sections 2210.0081, 2210.010, 2210.012, and
14 2210.013 to read as follows:

15 Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST
16 ASSOCIATION BY COMMISSIONER. In an action brought by the
17 commissioner against the association under Chapter 441:

18 (1) the association's inability to satisfy obligations
19 under Subchapter M related to the issuance of public securities
20 under this chapter constitutes a condition that makes the
21 association's continuation in business hazardous to the public or
22 to the association's policyholders for the purposes of Section
23 441.052;

24 (2) the time for the association to comply with the
25 requirements of supervision or for the conservator to complete the
26 conservator's duties, as applicable, is limited to three years from
27 the date the commissioner commences the action against the

1 association; and

2 (3) unless the commissioner takes further action
3 against the association under Chapter 441, as a condition of
4 release from supervision, the association must demonstrate to the
5 satisfaction of the commissioner that the association is able to
6 satisfy obligations under Subchapter M related to the issuance of
7 public securities under this chapter.

8 Sec. 2210.010. APPLICABILITY OF CERTAIN OTHER LAW. (a) A
9 person may not bring a private action against the association,
10 including a claim against an agent or representative of the
11 association, under Chapter 541 or 542. Notwithstanding any other
12 provision of this code or this chapter, a class action under
13 Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil
14 Procedure, may only be brought against the association by the
15 attorney general at the request of the department.

16 (b) Chapter 542 does not apply to the processing and
17 settlement of claims by the association.

18 Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND
19 EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) A member of
20 the board of directors or an employee of the association may not:

21 (1) accept or solicit any gift, favor, or service that
22 might reasonably tend to influence the member or employee in the
23 discharge of duties related to the operation or business of the
24 association or that the member or employee knows or should know is
25 being offered with the intent to influence the member's or
26 employee's conduct related to the operation or business of the
27 association;

1 (2) accept other employment or engage in a business or
2 professional activity that the member or employee might reasonably
3 expect would require or induce the member or employee to disclose
4 confidential information acquired by reason of the member's or
5 employee's position with the association;

6 (3) accept other employment or compensation that could
7 reasonably be expected to impair the member's or employee's
8 independence of judgment in the performance of the member's or
9 employee's duties related to the operation or business of the
10 association;

11 (4) make personal investments that could reasonably be
12 expected to create a substantial conflict between the member's or
13 employee's private interest and the interest of the association; or

14 (5) intentionally or knowingly solicit, accept, or
15 agree to accept any benefit for having exercised the member's or
16 employee's powers related to the operation or business of the
17 association or having performed, in favor of another, the member's
18 or employee's duties related to the operation or business of the
19 association.

20 (b) An association employee who violates Subsection (a) or a
21 code of conduct established under Section 2210.107(a)(4) is subject
22 to an employment-related sanction, including termination of the
23 employee's employment with the association.

24 (c) A member of the board of directors or an association
25 employee who violates Subsection (a) is subject to any applicable
26 civil or criminal penalty if the violation also constitutes a
27 violation of another statute or rule.

1 (d) A board member or employee of the association who
2 reasonably suspects that a fraudulent insurance act has been or is
3 about to be committed by any board member or employee of the
4 association shall, not later than the 30th day after discovering
5 the conduct, report the conduct and identity of the person engaging
6 in the conduct to the department and may report the conduct and the
7 identity of the person engaging in the conduct to another
8 appropriate governmental authority. The department shall forward a
9 report received under this subsection to the appropriate
10 governmental authority if the department does not have the
11 authority to finally resolve, or jurisdiction over, the matter that
12 is the subject of the report.

13 Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS
14 PROHIBITED. A member of the board of directors or an employee of
15 the association may not appoint or employ, or contract with, the
16 following individuals for the provision of goods or services in
17 connection with the operation or business of the association, if
18 the individual to be appointed or employed, or with whom a contract
19 is to be entered into, is to be directly or indirectly compensated
20 from funds of the association:

21 (1) an individual related to the member or employee
22 within a degree of relationship described by Section 573.002,
23 Government Code; or

24 (2) an individual related to any member of the board of
25 directors or employee of the association within a degree of
26 relationship described by Section 573.002, Government Code.

27 SECTION 10. Section 2210.053, Insurance Code, is amended by

1 amending Subsection (b) and adding Subsection (c) to read as
2 follows:

3 (b) The department may develop programs to improve the
4 efficient operation of the association, including a program for
5 approving policy forms under Section 2301.010 and a program
6 designed to create incentives for insurers to write windstorm and
7 hail insurance voluntarily to cover property located in a
8 catastrophe area, especially property located on the barrier
9 islands of this state.

10 (c) The association may not be considered a debtor
11 authorized to file a petition or seek relief in bankruptcy under
12 Title 11, United States Code.

13 SECTION 11. Subchapter B, Chapter 2210, Insurance Code, is
14 amended by adding Sections 2210.058 and 2210.061 to read as
15 follows:

16 Sec. 2210.058. CLAIMS PRACTICES AUDIT. (a) The
17 commissioner, in the manner and at the time the commissioner
18 determines to be necessary, shall conduct a random audit of claim
19 files concerning claims the bases of which are damage to insured
20 property caused by a particular storm to:

21 (1) determine whether the association is adequately
22 and properly documenting claims decisions in each claim file; and

23 (2) ensure that each claim is being handled
24 appropriately, including being handled in accordance with the terms
25 of the policy under which the claim is filed.

26 (b) The department shall conduct an audit required under
27 this section as soon as possible to ensure the quality of the

1 process with which the association is handling claims described by
2 Subsection (a).

3 (c) If, following an audit conducted under this section, the
4 commissioner determines that the association is not adequately and
5 properly documenting claims decisions or that claims described by
6 Subsection (a) are not otherwise being handled appropriately, the
7 commissioner shall:

8 (1) notify the board of directors of that
9 determination; and

10 (2) identify the manner in which the association
11 should correct any deficiencies identified by the commissioner and
12 issue an order to that effect.

13 Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES:
14 COMPENSATION AND BONUSES. The association shall post on the
15 association's Internet website any compensation, monetary or
16 otherwise, and any bonus that, when aggregated, exceed \$100,000 in
17 a calendar year and that are paid or given by the association to:

18 (1) a vendor or independent contractor with whom the
19 association has a contract; or

20 (2) an association employee.

21 SECTION 12. Section 2210.071(a), Insurance Code, is amended
22 to read as follows:

23 (a) If, in a catastrophe year, an occurrence or series of
24 occurrences in a catastrophe area results in insured losses and
25 operating expenses of the association in excess of premium and
26 other revenue of the association, the excess losses and operating
27 expenses shall be paid as provided by this subchapter.

1 SECTION 13. Section 2210.072, Insurance Code, is amended by
2 amending Subsections (a), (b), and (c) and adding Subsections
3 (b-1), (e), and (f) to read as follows:

4 (a) Losses not paid under Section 2210.071(b) [~~2210.071~~]
5 shall be paid as provided by this section from the proceeds from
6 Class 1 public securities authorized to be issued in accordance
7 with Subchapter M before, on, or after the date of any occurrence or
8 series of occurrences that results in insured losses. Public
9 securities issued under this section must be repaid within a period
10 not to exceed 14 [~~10~~] years, and may be repaid sooner if the board of
11 directors elects to do so and the commissioner approves.

12 (b) Public securities described by Subsection (a) that are
13 issued before an occurrence or series of occurrences that results
14 in incurred losses:

15 (1) may be issued on the request of the board of
16 directors with the approval of the commissioner; and

17 (2) may not, in the aggregate, exceed \$1 billion at any
18 one time, regardless of the calendar year or years in which the
19 outstanding public securities were issued.

20 (b-1) Public securities described by Subsection (a):

21 (1) shall be issued as necessary in a principal amount
22 not to exceed \$1 billion per catastrophe year, in the aggregate, for
23 securities issued during that catastrophe year before the
24 occurrence or series of occurrences that results in incurred losses
25 in that year and securities issued on or after the date of that
26 occurrence or series of occurrences, and regardless of whether for
27 a single occurrence or a series of occurrences; and

1 (2) subject to the \$1 billion maximum described by
2 Subdivision (1), may be issued, in one or more issuances or
3 tranches, during the calendar year in which the occurrence or
4 series of occurrences occurs or, if the public securities cannot
5 reasonably be issued in that year, during the following calendar
6 year.

7 (c) If [~~the losses are paid with~~] public securities are
8 issued as described by this section, the public securities shall be
9 repaid in the manner prescribed by Subchapter M from association
10 premium revenue.

11 (e) The proceeds of any outstanding public securities
12 described by Subsection (a) that are issued before an occurrence or
13 series of occurrences shall be depleted before the proceeds of any
14 securities issued after an occurrence or series of occurrences may
15 be used. This subsection does not prohibit the association from
16 issuing securities after an occurrence or series of occurrences
17 before the proceeds of outstanding public securities issued during
18 a previous catastrophe year have been depleted.

19 (f) If, under Subsection (e), the proceeds of any
20 outstanding public securities issued during a previous catastrophe
21 year must be depleted, those proceeds shall count against the \$1
22 billion limit on public securities described by this section in the
23 catastrophe year in which the proceeds must be depleted.

24 SECTION 14. Section 2210.073, Insurance Code, is amended by
25 amending Subsection (b) and adding Subsection (c) to read as
26 follows:

27 (b) Public securities described by Subsection (a):

1 (1) may be issued as necessary in a principal amount
2 not to exceed \$1 billion per catastrophe year, in the aggregate,
3 whether for a single occurrence or a series of occurrences; and

4 (2) subject to the \$1 billion maximum described by
5 Subdivision (1), may be issued, in one or more issuances or
6 tranches, during the calendar year in which the occurrence or
7 series of occurrences occurs or, if the public securities cannot
8 reasonably be issued in that year, during the following calendar
9 year.

10 (c) If the losses are paid with public securities described
11 by this section, the public securities shall be repaid in the manner
12 prescribed by Subchapter M.

13 SECTION 15. Section 2210.074, Insurance Code, is amended by
14 amending Subsection (b) and adding Subsection (c) to read as
15 follows:

16 (b) Public securities described by Subsection (a):

17 (1) may be issued as necessary in a principal amount
18 not to exceed \$500 million per catastrophe year, in the aggregate,
19 whether for a single occurrence or a series of occurrences; and

20 (2) subject to the \$500 million maximum described by
21 Subdivision (1), may be issued, in one or more issuances or
22 tranches, during the calendar year in which the occurrence or
23 series of occurrences occurs or, if the public securities cannot
24 reasonably be issued in that year, during the following calendar
25 year.

26 (c) If the losses are paid with public securities described
27 by this section, the public securities shall be repaid in the manner

1 prescribed by Subchapter M through member assessments as provided
2 by this section. The association shall notify each member of the
3 association of the amount of the member's assessment under this
4 section. The proportion of the losses allocable to each insurer
5 under this section shall be determined in the manner used to
6 determine each insurer's participation in the association for the
7 year under Section 2210.052. A member of the association may not
8 recoup an assessment paid under this subsection through a premium
9 surcharge or tax credit.

10 SECTION 16. Section 2210.075, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.075. REINSURANCE. (a) Before any occurrence or
13 series of occurrences, an insurer may elect to purchase reinsurance
14 to cover an assessment for which the insurer would otherwise be
15 liable under Section 2210.074(c) [~~2210.074(b)~~].

16 (b) An insurer must notify the board of directors, in the
17 manner prescribed by the association whether the insurer will be
18 purchasing reinsurance. If the insurer does not elect to purchase
19 reinsurance under this section, the insurer remains liable for any
20 assessment imposed under Section 2210.074(c) [~~2210.074(b)~~].

21 SECTION 17. Section 2210.102, Insurance Code, is amended by
22 adding Subsection (i) to read as follows:

23 (i) Notwithstanding Subsection (f), for a vacancy occurring
24 in a position under Subsection (b), the commissioner may appoint,
25 for the lesser of 120 days or until the vacancy is filled, a person
26 who has demonstrated knowledge in insurance principles. This
27 subsection does not apply to a vacancy due to the expiration of a

1 term occurring under Section 2210.103. This subsection expires
2 December 31, 2012, and any appointment in effect on that date is
3 continued until the expiration of the term of the appointment.

4 SECTION 18. Section 2210.105, Insurance Code, is amended by
5 amending Subsections (a) and (b) and adding Subsections (b-1), (e),
6 and (f) to read as follows:

7 (a) Except for an emergency meeting, the association shall:

8 (1) notify the department not later than the 11th day
9 before the date of a meeting of the board of directors or of the
10 members of the association; and

11 (2) not later than the seventh day before the date of a
12 meeting of the board of directors, post notice of the meeting on the
13 association's Internet website and the department's Internet
14 website.

15 (b) Except for a closed meeting authorized by Subchapter D,
16 Chapter 551, Government Code, a meeting of the board of directors or
17 of the members of the association is open to[+]

18 [~~(1) the commissioner or the commissioner's designated~~
19 ~~representative, and~~

20 [~~(2)~~] the public.

21 (b-1) The commissioner or the commissioner's designated
22 representative may attend a meeting of the board of directors or the
23 members of the association, including a closed meeting authorized
24 by Subchapter D, Chapter 551, Government Code, except for those
25 portions of a closed meeting that involve the rendition of legal
26 advice to the board concerning a regulatory matter or that would
27 constitute an ex parte communication with the commissioner.

1 (e) The association shall:

2 (1) broadcast live on the association's Internet
3 website all meetings of the board of directors, other than closed
4 meetings; and

5 (2) maintain on the association's Internet website an
6 archive of meetings of the board of directors.

7 (f) A recording of a meeting must be maintained in the
8 archive required under Subsection (e) through and including the
9 second anniversary of the meeting.

10 SECTION 19. Section 2210.107, Insurance Code, is amended to
11 read as follows:

12 Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The
13 primary objectives of the board of directors are to ensure that the
14 board and the association:

15 (1) operate [~~operates~~] in accordance with this
16 chapter, the plan of operation, and commissioner rules;

17 (2) comply [~~complies~~] with sound insurance
18 principles; [~~and~~]

19 (3) meet [~~meets~~] all standards imposed under this
20 chapter;

21 (4) establish a code of conduct and performance
22 standards for association employees and persons with which the
23 association contracts; and

24 (5) establish, and adhere to terms of, an annual
25 evaluation of association management necessary to achieve the
26 statutory purpose, board objectives, and any performance or
27 enterprise risk management objectives established by the board.

1 (b) Not later than June 1 of each year, the association
2 shall submit to the commissioner, the legislative oversight board
3 established under Subchapter N, the governor, the lieutenant
4 governor, and the speaker of the house of representatives a report
5 evaluating the extent to which the board met the objectives
6 described by Subsection (a) in the 12-month period immediately
7 preceding the date of the report.

8 SECTION 20. Subchapter C, Chapter 2210, Insurance Code, is
9 amended by adding Section 2210.108 to read as follows:

10 Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except
11 as specifically provided by this chapter or another law, the
12 association is subject to Chapters 551 and 552, Government Code.

13 (b) A settlement agreement to which the association is a
14 party:

15 (1) subject to Subsection (d), is public information
16 and is not exempted from required disclosure under Chapter 552,
17 Government Code; and

18 (2) if applicable, must contain the name of any
19 attorney representing a claimant or the association in connection
20 with the claim that is the basis of the settlement.

21 (c) Subsection (b) may not be construed to limit or
22 otherwise restrict the categories of information that are public
23 information under Section 552.022, Government Code.

24 (d) The association, before disclosing a settlement
25 agreement to which the association is a party, shall redact from the
26 settlement agreement any information that is confidential under
27 Chapter 552, Government Code.

1 SECTION 21. Section 2210.152, Insurance Code, is amended by
2 adding Subsection (c) to read as follows:

3 (c) The plan of operation shall require the association to
4 use the claim settlement guidelines published by the commissioner
5 under Section 2210.578(f) in evaluating the extent to which a loss
6 to insured property is incurred as a result of wind, waves, tidal
7 surges, or rising waters not caused by waves or surges.

8 SECTION 22. Section 2210.202, Insurance Code, is amended to
9 read as follows:

10 Sec. 2210.202. APPLICATION FOR COVERAGE. (a) A person who
11 has an insurable interest in insurable property may apply to the
12 association for insurance coverage provided under the plan of
13 operation and an inspection of the property, subject to any rules
14 established by the board of directors and approved by the
15 commissioner. The association shall make insurance available to
16 each applicant in the catastrophe area whose property is insurable
17 property but who, after diligent efforts, is unable to obtain
18 property insurance through the voluntary market, as evidenced by
19 one declination from an insurer authorized to engage in the
20 business of, and writing, property insurance providing windstorm
21 and hail coverage in the first tier coastal counties. For purposes
22 of this section, "declination" has the meaning assigned by the plan
23 of operation and shall include a refusal to offer coverage for the
24 perils of windstorm and hail and the inability to obtain
25 substantially equivalent insurance coverage for the perils of
26 windstorm and hail. Notwithstanding Section 2210.203(c), evidence
27 of one declination every three calendar years is also required with

1 an application for renewal of an association policy.

2 (b) A property and casualty agent must submit an application
3 for initial ~~[the]~~ insurance coverage on behalf of the applicant on
4 forms prescribed by the association. The association shall develop
5 a simplified process that allows for the acceptance of an
6 application for initial or renewal coverage from, and payment of
7 premiums by, a property and casualty agent, a person insured under
8 this chapter, or an applicant for coverage under this chapter. Each
9 ~~[The]~~ application for initial or renewal coverage must contain:

10 (1) a statement as to whether the applicant has
11 submitted or will submit the premium in full from personal funds or,
12 if not, to whom a balance is or will be due; and

13 (2) ~~[. Each application for initial or renewal~~
14 ~~coverage must also contain]~~ a statement that the agent acting on
15 behalf of the applicant possesses proof of the declination
16 described by Subsection (a) and proof of flood insurance coverage
17 or unavailability of that coverage as described by Section
18 2210.203(a-1), regardless of whether the agent or the applicant
19 submits the application for coverage.

20 SECTION 23. Section 2210.203, Insurance Code, is amended by
21 amending Subsection (a) and adding Subsection (d) to read as
22 follows:

23 (a) If the association determines that the property for
24 which an application for initial insurance coverage is made is
25 insurable property, the association, on payment of the premium,
26 shall direct the issuance of an insurance policy as provided by the
27 plan of operation.

1 (d) The commissioner, after receiving a recommendation from
2 the board of directors, shall approve a commission structure for
3 payment of an agent who submits an application for coverage to the
4 association on behalf of a person who has an insurable interest in
5 insurable property. The commission structure adopted by the
6 commissioner must be fair and reasonable, taking into consideration
7 the amount of work performed by an agent in submitting an
8 application to the association and the prevailing commission
9 structure in the private windstorm market.

10 SECTION 24. Sections 2210.204(d) and (e), Insurance Code,
11 are amended to read as follows:

12 (d) If an insured requests cancellation of the insurance
13 coverage, the association shall refund the unearned premium, less
14 any minimum retained premium set forth in the plan of operation,
15 payable to the insured and the holder of an unpaid balance. The
16 property and casualty agent who received a commission as the result
17 of the issuance of an association policy providing the canceled
18 coverage [~~submitted the application~~] shall refund the agent's
19 commission on any unearned premium in the same manner.

20 (e) For cancellation of insurance coverage under this
21 section, the minimum retained premium in the plan of operation must
22 be for a period of not less than 90 [~~180~~] days, except for events
23 specified in the plan of operation that reflect a significant
24 change in the exposure or the policyholder concerning the insured
25 property, including:

26 (1) the purchase of similar coverage in the voluntary
27 market;

- (2) sale of the property to an unrelated party;
- (3) death of the policyholder; or
- (4) total loss of the property.

SECTION 25. Subchapter E, Chapter 2210, Insurance Code, is amended by adding Sections 2210.205 and 2210.210 to read as follows:

Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

(a) A windstorm and hail insurance policy issued by the association must:

(1) require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs; and

(2) contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including:

(A) the processes and deadlines for appraisal under Section 2210.574 and alternative dispute resolution under Section 2210.575;

(B) the binding effect of appraisal under Section 2210.574; and

(C) the necessity of complying with the requirements of Subchapter L-1 to seek administrative or judicial relief.

(b) The commissioner, on a showing of good cause by a person insured under this chapter, may extend the one-year period described by Subsection (a)(1) for a period not to exceed 180 days.

Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED.

1 The association may not issue coverage for the following
2 structures, regardless of whether the structure is otherwise
3 insurable property under this chapter:

4 (1) a wind turbine;

5 (2) a structure used primarily as a casino or other
6 gambling establishment, other than a premises on which bingo may be
7 conducted under Chapter 2001, Occupations Code;

8 (3) a structure used as a sexually oriented business,
9 as defined by Section 243.002, Local Government Code; or

10 (4) a structure in which, or in any portion of which,
11 an establishment is located that is used primarily for the
12 operation of video lottery machines, eight-liners, or other
13 gambling devices, regardless of whether the gambling devices are
14 regulated under state law.

15 SECTION 26. Section 2210.251(g), Insurance Code, is amended
16 to read as follows:

17 (g) The department shall issue a certificate of compliance
18 for each structure that qualifies for coverage. The certificate is
19 evidence of insurability of the structure by the association. The
20 decision whether to issue a certificate of compliance for a
21 structure is wholly within the discretion of the department and is
22 not dependent on the actions of the Texas Board of Professional
23 Engineers or any other regulatory agency.

24 SECTION 27. Section 2210.254, Insurance Code, is amended by
25 amending Subsection (a) and adding Subsection (e) to read as
26 follows:

27 (a) For purposes of this chapter, a "qualified inspector"

1 includes:

2 (1) a person determined by the department to be
3 qualified because of training or experience to perform building
4 inspections;

5 (2) a licensed professional engineer who is on the
6 roster described by Section 1001.652, Occupations Code, and meets
7 the requirements specified by commissioner rule for appointment to
8 conduct windstorm inspections; and

9 (3) an inspector who:

10 (A) is certified by the International Code
11 Council, the Building Officials and Code Administrators
12 International, Inc., the International Conference of Building
13 Officials, or the Southern Building Code Congress International,
14 Inc.;

15 (B) has certifications as a buildings inspector
16 and coastal construction inspector; and

17 (C) complies with other requirements specified
18 by commissioner rule.

19 (e) The department may establish an annual renewal period
20 for persons appointed as qualified inspectors.

21 SECTION 28. Section 2210.255(a), Insurance Code, is amended
22 to read as follows:

23 (a) On request of an engineer who is licensed by the Texas
24 Board of Professional Engineers and is on the roster described by
25 Section 1001.652, Occupations Code, the commissioner shall appoint
26 the engineer as an inspector under this subchapter not later than
27 the 10th day after the date the engineer delivers to the

1 commissioner information demonstrating that the engineer is
2 qualified to perform windstorm inspections under this subchapter.

3 SECTION 29. Subchapter F, Chapter 2210, Insurance Code, is
4 amended by adding Section 2210.2551 to read as follows:

5 Sec. 2210.2551. ENFORCEMENT AUTHORITY; RULES. (a) The
6 department has exclusive authority over all matters relating to the
7 appointment and oversight of qualified inspectors for purposes of
8 this chapter and to the physical inspection of structures for the
9 purposes of this chapter, including the submission of documents to
10 the department or association regarding the physical inspection of
11 structures.

12 (b) The commissioner by rule shall establish criteria to
13 ensure that a person seeking appointment as a qualified inspector
14 under this subchapter, including an engineer seeking appointment
15 under Section 2210.255, possesses the knowledge, understanding,
16 and professional competence to perform windstorm inspections under
17 this chapter and to comply with other requirements of this chapter.

18 (c) Subsection (b) applies only to a determination
19 concerning the appointment of a qualified inspector under this
20 chapter. The exclusive jurisdiction of the department under this
21 section does not apply to the practice of engineering as defined by
22 Section 1001.003, Occupations Code, or to a license issued,
23 qualification required, determination made, order issued, judgment
24 rendered, or other action of a board operating under Chapter 1001,
25 Occupations Code. In the event of conflict, the authority of that
26 board prevails with regard to the practice of engineering.

27 (d) The department shall report to the Texas Board of

1 Professional Engineers if the department determines that:

2 (1) after an oversight inspection, the results of a
3 windstorm inspection performed by a qualified inspector who is
4 licensed by that board are based on questionable grounds or were the
5 result of questionable circumstances; or

6 (2) a qualified inspector on the roster described by
7 Section 1001.652, Occupations Code, failed to submit to the
8 department plans, designs, or calculations of other substantiating
9 information necessary to demonstrate that an inspected structure
10 meets the requirements of this chapter and department rules.

11 (e) The department shall include in its biennial report to
12 the legislature under Section 32.022 the number of matters reported
13 to the Texas Board of Professional Engineers under this section and
14 the outcome of those matters.

15 SECTION 30. The heading to Section 2210.256, Insurance
16 Code, is amended to read as follows:

17 Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING
18 APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS.

19 SECTION 31. Section 2210.256, Insurance Code, is amended by
20 adding Subsection (a-1) to read as follows:

21 (a-1) In addition to any other action authorized under this
22 section, the commissioner ex parte may enter an emergency cease and
23 desist order under Chapter 83 against a qualified inspector, or a
24 person acting as a qualified inspector, if:

25 (1) the commissioner believes that:

26 (A) the qualified inspector has:

27 (i) through submitting or failing to submit

1 to the department sealed plans, designs, calculations, or other
2 substantiating information, failed to demonstrate that a structure
3 or a portion of a structure subject to inspection meets the
4 requirements of this chapter and department rules; or

5 (ii) refused to comply with requirements
6 imposed under this chapter or department rules; or

7 (B) the person acting as a qualified inspector is
8 acting without appointment as a qualified inspector under Section
9 2210.254 or 2210.255; and

10 (2) the commissioner determines that the conduct
11 described by Subdivision (1) is fraudulent or hazardous or creates
12 an immediate danger to the public.

13 SECTION 32. Section 2210.259, Insurance Code, is amended by
14 adding Subsection (c) to read as follows:

15 (c) The commissioner by rule may provide for a discount of,
16 or a credit against, a surcharge assessed under Subsection (a) in
17 instances in which a policyholder demonstrates that the
18 noncompliant structure was constructed with at least one structural
19 building component that complies with the building code standards
20 set forth in the plan of operation.

21 SECTION 33. Subchapter F, Chapter 2210, Insurance Code, is
22 amended by adding Section 2210.260 to read as follows:

23 Sec. 2210.260. ALTERNATIVE ELIGIBILITY FOR COVERAGE. (a)
24 On and after August 31, 2011, a person who has an insurable interest
25 in a residential structure may obtain insurance coverage through
26 the association for that structure without obtaining a certificate
27 of compliance under Section 2210.251(g) in accordance with this

1 section and rules adopted by the commissioner.

2 (b) The department may issue an alternative certification
3 for a residential structure if the person who has an insurable
4 interest in the structure demonstrates that at least one qualifying
5 structural building component of the structure has been:

6 (1) inspected by a department inspector or by a
7 qualified inspector; and

8 (2) determined to be in compliance with applicable
9 building code standards, as set forth in the plan of operation.

10 (c) The commissioner shall adopt reasonable and necessary
11 rules to implement this section. The rules adopted under this
12 section must establish which structural building components are
13 considered qualifying structural building components for the
14 purposes of Subsection (b), taking into consideration those items
15 that are most probable to generate losses for the association's
16 policyholders and the cost to upgrade those items.

17 (d) Except as provided in Section 2210.251(f), a person who
18 has an insurable interest in a residential structure that is
19 insured by the association as of January 1, 2012, but for which the
20 person has not obtained a certificate of compliance under Section
21 2210.251(g), must obtain an alternative certification under this
22 section before the association, on or after January 1, 2013, may
23 renew coverage for the structure.

24 (e) Each residential structure for which a person obtains an
25 alternative certification under this section must comply with:

26 (1) the requirements of this chapter, including
27 Section 2210.258; and

1 (2) the association's underwriting requirements,
2 including maintaining the structure in an insurable condition and
3 paying premiums in the manner required by the association.

4 (f) The association shall develop and implement an
5 actuarially sound rate, credit, or surcharge that reflects the
6 risks presented by structures with reference to which alternative
7 certifications have been obtained under this section. A rate,
8 credit, or surcharge under this subsection may vary based on the
9 number of qualifying structural building components included in a
10 structure with reference to which an alternative certification is
11 obtained under this section. A surcharge under this subsection
12 must be developed and implemented in an amount that does not exceed
13 the percentage of premium at which a surcharge under Section
14 2210.259(a) is assessed.

15 SECTION 34. Section 2210.453, Insurance Code, is amended by
16 adding Subsections (c), (d), and (e) to read as follows:

17 (c) If the association does not purchase reinsurance as
18 authorized by this section, the board, not later than June 1 of each
19 year, shall submit to the commissioner, the legislative oversight
20 board established under Subchapter N, the governor, the lieutenant
21 governor, and the speaker of the house of representatives a report
22 containing an actuarial plan for paying losses in the event of a
23 catastrophe with estimated damages of \$2.5 billion or more. The
24 report required by this subsection must:

25 (1) document and denominate the association's
26 resources available to pay claims, including cash or other highly
27 liquid assets, assessments that the association is projected to

1 impose, pre-event and post-event bonding capacity, and
2 private-sector recognized risk-transfer mechanisms, including
3 catastrophe bonds and reinsurance;

4 (2) include an independent, third-party appraisal of
5 the likelihood of an assessment, the maximum potential size of the
6 assessment, and an estimate of the probability that the assessment
7 would not be adequate to meet the association's needs; and

8 (3) include an analysis of financing alternatives to
9 assessments that includes the costs of borrowing and the
10 consequences that additional purchase of reinsurance, catastrophe
11 bonds, or other private-sector recognized risk-transfer
12 instruments would have in reducing the size or potential of
13 assessments.

14 (d) A person who prepares a report required by Subsection
15 (c) may not contract to provide any other service to the
16 association, except for the preparation of similar reports, before
17 the third anniversary of the date the last report prepared by the
18 person under that subsection is submitted.

19 (e) The report submitted under this section is for
20 informational purposes only and does not bind the association to a
21 particular course of action.

22 SECTION 35. Subchapter J, Chapter 2210, Insurance Code, is
23 amended by adding Section 2210.455 to read as follows:

24 Sec. 2210.455. CATASTROPHE PLAN. (a) Not later than June 1
25 of each year, the board shall submit to the commissioner, the
26 legislative oversight board established under Subchapter N, the
27 governor, the lieutenant governor, and the speaker of the house of

1 representatives a catastrophe plan covering the period beginning on
2 the date the plan is submitted and ending on the following May 31.

3 (b) The catastrophe plan must:

4 (1) describe the manner in which the association will,
5 during the period covered by the plan, evaluate losses and process
6 claims after the following windstorms affecting an area of maximum
7 exposure to the association:

8 (A) a windstorm with a four percent chance of
9 occurring during the period covered by the plan;

10 (B) a windstorm with a two percent chance of
11 occurring during the period covered by the plan; and

12 (C) a windstorm with a one percent chance of
13 occurring during the period covered by the plan; and

14 (2) include, if the association does not purchase
15 reinsurance under Section 2210.453 for the period covered by the
16 plan, an actuarial plan for paying losses in the event of a
17 catastrophe with estimated damages of \$2.5 billion or more.

18 (c) The catastrophe plan must include a description of how
19 losses under association policies will be paid, and how claims
20 under association policies will be administered and adjusted,
21 during the period covered by the plan.

22 (d) The catastrophe plan submitted under this section is for
23 informational purposes only and does not bind the association to a
24 particular course of action.

25 SECTION 36. Section 2210.502, Insurance Code, is amended by
26 adding Subsection (e) to read as follows:

27 (e) Notwithstanding Subsection (a), the maximum liability

1 limit for dwellings and corporeal movable property described by
2 Section 2210.501(b)(1) may not exceed \$1.5 million.

3 SECTION 37. Sections 2210.551(a) and (b), Insurance Code,
4 are amended to read as follows:

5 (a) This section:

6 (1) does not apply to a person who is required to
7 resolve a dispute under Subchapter L-1; and

8 (2) applies only to:

9 (A) [~~(1)~~] a person not described by Subdivision
10 (1) who is insured under this chapter or an authorized
11 representative of the person; or

12 (B) [~~(2)~~] an affected insurer.

13 (b) A person or entity described by Subsection (a)(2) [~~(a)~~]
14 who is aggrieved by an act, ruling, or decision of the association
15 may appeal to the commissioner not later than the 30th day after the
16 date of that act, ruling, or decision.

17 SECTION 38. Chapter 2210, Insurance Code, is amended by
18 adding Subchapter L-1 to read as follows:

19 SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

20 Sec. 2210.571. DEFINITIONS. In this subchapter:

21 (1) "Association policy" means a windstorm and hail
22 insurance policy issued by the association.

23 (2) "Claim" means a request for payment under an
24 association policy. The term also includes any other claim against
25 the association, or an agent or representative of the association,
26 relating to an insured loss, under any theory or cause of action of
27 any kind, regardless of the theory under which the claim is

1 asserted, the cause of action brought, or the type of damages
2 sought.

3 (3) "Claimant" means a person who makes a claim.

4 Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

5 (a) This subchapter provides the exclusive remedies for a claim
6 against the association, including an agent or representative of
7 the association.

8 (b) Subject to Section 2210.576, the association may not be
9 held liable for any amount other than covered losses payable under
10 the terms of the association policy.

11 (c) The association, and an agent or representative of the
12 association, may not be held liable for damages under Chapter 17,
13 Business & Commerce Code, or under any provision of any law
14 providing for additional damages, punitive damages, or a penalty.

15 Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a)
16 Subject to Section 2210.205(b), an insured must file a claim under
17 an association policy not later than the first anniversary of the
18 date on which the damage to property that is the basis of the claim
19 occurs.

20 (b) The claimant may submit written materials, comments,
21 documents, records, and other information to the association
22 relating to the claim. If the claimant fails to submit information
23 in the claimant's possession that is necessary for the association
24 to determine whether to accept or reject a claim, the association
25 may, not later than the 30th day after the date the claim is filed,
26 request in writing the necessary information from the claimant.

27 (c) The association shall, on request, provide a claimant

1 reasonable access to all information relevant to the determination
2 of the association concerning the claim. The claimant may copy the
3 information at the claimant's own cost or may request the
4 association to provide a copy of all or part of the information to
5 the claimant. The association may charge a claimant the actual cost
6 incurred by the association in providing a copy of information
7 under this section, excluding any amount for labor involved in
8 making any information or copy of information available to a
9 claimant.

10 (d) Unless the applicable 60-day period described by this
11 subsection is extended by order of the commissioner, not later than
12 the later of the 60th day after the date the association receives a
13 claim or the 60th day after the date the association receives
14 information requested under Subsection (b), the association shall
15 provide the claimant, in writing, notification that:

16 (1) the association has accepted coverage for the
17 claim in full;

18 (2) the association has accepted coverage for the
19 claim in part and has denied coverage for the claim in part; or

20 (3) the association has denied coverage for the claim
21 in full.

22 (e) In a notice described by Subsection (d)(1), the
23 association must inform the claimant of the amount of loss the
24 association will pay and of the time limit to request appraisal
25 under Section 2210.574.

26 (f) In a notice described by Subsection (d)(2) or (3), the
27 association must inform the claimant of, as applicable:

1 (1) the portion of the loss for which the association
2 accepts coverage and the amount of loss the association will pay;

3 (2) the portion of the loss for which the association
4 denies coverage and a detailed summary of the manner in which the
5 association determined not to accept coverage for that portion of
6 the claim; and

7 (3) the time limit to:

8 (A) request appraisal under Section 2210.574 of
9 the portion of the loss for which the association accepts coverage;
10 and

11 (B) provide notice of intent to bring an action
12 as required by Section 2210.575.

13 (g) In addition to the notice required under Subsection
14 (d)(2) or (3), the association shall provide a claimant with a form
15 on which the claimant may provide the association notice of intent
16 to bring an action as required by Section 2210.575.

17 Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED
18 COVERAGE. (a) If the association accepts coverage for a claim in
19 full and a claimant disputes only the amount of loss the association
20 will pay for the claim, or if the association accepts coverage for a
21 claim in part and a claimant disputes the amount of loss the
22 association will pay for the accepted portion of the claim, the
23 claimant may request from the association a detailed summary of the
24 manner in which the association determined the amount of loss the
25 association will pay.

26 (b) If a claimant disputes the amount of loss the
27 association will pay for a claim or a portion of a claim, the

1 claimant, not later than the 60th day after the date the claimant
2 receives the notice described by Section 2210.573(d)(1) or (2), may
3 demand appraisal in accordance with the terms of the association
4 policy.

5 (c) If a claimant, on a showing of good cause and not later
6 than the 15th day after the expiration of the 60-day period
7 described by Subsection (b), requests in writing that the 60-day
8 period be extended, the association may grant an additional 30-day
9 period in which the claimant may demand appraisal.

10 (d) If a claimant demands appraisal under this section:

11 (1) the appraisal must be conducted as provided by the
12 association policy; and

13 (2) the claimant and the association are responsible
14 in equal shares for paying any costs incurred or charged in
15 connection with the appraisal, including a fee charged under
16 Subsection (e).

17 (e) If a claimant demands appraisal under this section and
18 the appraiser retained by the claimant and the appraiser retained
19 by the association are able to agree on an appraisal umpire to
20 participate in the resolution of the dispute, the appraisal umpire
21 is the umpire chosen by the two appraisers. If the appraiser
22 retained by the claimant and the appraiser retained by the
23 association are unable to agree on an appraisal umpire to
24 participate in the resolution of the dispute, the commissioner
25 shall select an appraisal umpire from a roster of qualified umpires
26 maintained by the department. The department may:

27 (1) require appraisers to register with the department

1 as a condition of being placed on the roster of umpires; and

2 (2) charge a reasonable registration fee to defray the
3 cost incurred by the department in maintaining the roster and the
4 commissioner in selecting an appraisal umpire under this
5 subsection.

6 (f) The appraisal decision is binding on the claimant and
7 the association as to the amount of loss the association will pay
8 for a fully accepted claim or the accepted portion of a partially
9 accepted claim and is not appealable or otherwise reviewable. A
10 claimant that does not demand appraisal before the expiration of
11 the periods described by Subsections (b) and (c) waives the
12 claimant's right to contest the association's determination of the
13 amount of loss the association will pay with reference to a fully
14 accepted claim or the accepted portion of a partially accepted
15 claim.

16 (g) A claimant may not bring an action against the
17 association with reference to a claim for which the association has
18 accepted coverage in full.

19 Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE. (a)
20 If the association denies coverage for a claim in part or in full
21 and the claimant disputes that determination, the claimant, not
22 later than the expiration of the limitations period described by
23 Section 2210.577(a), but after the date the claimant receives the
24 notice described by Section 2210.573(d)(2) or (3), must provide the
25 association with notice that the claimant intends to bring an
26 action against the association concerning the partial or full
27 denial of the claim.

1 (b) If a claimant provides notice of intent to bring an
2 action under Subsection (a), the association may require the
3 claimant, as a prerequisite to filing the action against the
4 association, to submit the dispute to alternative dispute
5 resolution by mediation or moderated settlement conference, as
6 provided by Chapter 154, Civil Practice and Remedies Code. A
7 claimant that does not provide notice of intent to bring an action
8 before the expiration of the period described by Subsection (a)
9 waives the claimant's right to contest the association's partial or
10 full denial of coverage and is barred from bringing an action
11 against the association concerning the denial of coverage.

12 (c) The association must request alternative dispute
13 resolution of a dispute described by Subsection (b) not later than
14 the 60th day after the date the association receives from the
15 claimant notice of intent to bring an action.

16 (d) Alternative dispute resolution under this section must
17 be completed not later than the 60th day after the date a request
18 for alternative dispute resolution is made under Subsection (c).
19 The 60-day period described by this subsection may be extended by
20 the commissioner by rule or by the association and a claimant by
21 mutual consent.

22 (e) If the claimant is not satisfied after completion of
23 alternative dispute resolution, or if alternative dispute
24 resolution is not completed before the expiration of the 60-day
25 period described by Subsection (d) or any extension under that
26 subsection, the claimant may bring an action against the
27 association in a district court in the county in which the loss that

1 is the subject of the coverage denial occurred. An action brought
2 under this subsection shall be presided over by a judge appointed by
3 the judicial panel on multidistrict litigation designated under
4 Section 74.161, Government Code. A judge appointed under this
5 section must be a resident of a first tier coastal county or a
6 second tier coastal county.

7 (f) If a claimant brings an action against the association
8 concerning a partial or full denial of coverage, the court shall
9 abate the action until the notice of intent to bring an action has
10 been provided and, if requested by the association, the dispute has
11 been submitted to alternative dispute resolution, in accordance
12 with this section.

13 (g) A moderated settlement conference under this section
14 may be conducted by a panel consisting of one or more impartial
15 third parties.

16 (h) If the association requests mediation under this
17 section, the claimant and the association are responsible in equal
18 shares for paying any costs incurred or charged in connection with
19 the mediation.

20 (i) If the association requests mediation under this
21 section, and the claimant and the association are able to agree on a
22 mediator, the mediator is the mediator agreed to by the claimant and
23 the association. If the claimant and the association are unable to
24 agree on a mediator, the commissioner shall select a mediator from a
25 roster of qualified mediators maintained by the department. The
26 department may:

27 (1) require mediators to register with the department

1 as a condition of being placed on the roster; and

2 (2) charge a reasonable registration fee to defray the
3 cost incurred by the department in maintaining the roster and the
4 commissioner in selecting a mediator under this section.

5 (j) The commissioner shall establish rules to implement
6 this section, including provisions for expediting alternative
7 dispute resolution, facilitating the ability of a claimant to
8 appear with or without counsel, establishing qualifications
9 necessary for mediators to be placed on the roster maintained by the
10 department under Subsection (i), and providing that formal rules of
11 evidence shall not apply to the proceedings.

12 Sec. 2210.576. ISSUES BROUGHT TO SUIT; LIMITATIONS ON
13 RECOVERY. (a) The only issues a claimant may raise in an action
14 brought against the association under Section 2210.575 are:

15 (1) whether the association's denial of coverage was
16 proper; and

17 (2) the amount of the damages described by Subsection
18 (b) to which the claimant is entitled, if any.

19 (b) A claimant that brings an action against the association
20 under Section 2210.575 may recover only:

21 (1) the covered loss payable under the terms of the
22 association policy less, if applicable, the amount of loss already
23 paid by the association for any portion of a covered loss for which
24 the association accepted coverage;

25 (2) prejudgment interest from the 30th day after the
26 date specified in Section 2210.573(d), at the prejudgment interest
27 rate provided in Subchapter B, Chapter 304, Finance Code; and

1 (3) court costs and reasonable and necessary
2 attorney's fees.

3 Sec. 2210.577. LIMITATIONS PERIOD. (a) Notwithstanding
4 any other law, a claimant who brings an action against the
5 association under Section 2210.575 must bring the action not later
6 than the second anniversary of the date on which the person receives
7 a notice described by Section 2210.573(d)(2) or (3).

8 (b) This section is a statute of repose and controls over
9 any other applicable limitations period.

10 Sec. 2210.578. EXPERT PANEL. (a) The commissioner shall
11 appoint a panel of experts to advise the association concerning the
12 extent to which a loss to insurable property was incurred as a
13 result of wind, waves, tidal surges, or rising waters not caused by
14 waves or surges. The panel shall consist of a number of experts to
15 be decided by the commissioner. The commissioner shall appoint one
16 member of the panel to serve as the presiding officer of the panel.

17 (b) Members of the panel must have professional expertise
18 in, and be knowledgeable concerning, the geography and meteorology
19 of the Texas seacoast territory, as well as the scientific basis for
20 determining the extent to which damage to property is caused by
21 wind, waves, tidal surges, or rising waters not caused by waves or
22 surges.

23 (c) The panel shall meet at the request of the commissioner
24 or the call of the presiding officer of the panel.

25 (d) The panel shall investigate, collect, and evaluate the
26 information necessary to provide recommendations under Subsection
27 (e). The cost and expense incurred by the panel associated with the

1 work of the panel under this section shall be paid or reimbursed by
2 the association.

3 (e) At the request of the commissioner, the panel shall
4 recommend to the commissioner methods or models for determining the
5 extent to which a loss to insurable property may be or was incurred
6 as a result of wind, waves, tidal surges, or rising waters not
7 caused by waves or surges for geographic areas or regions
8 designated by the commissioner.

9 (f) After consideration of the recommendations made by the
10 panel under Subsection (e), the commissioner shall publish
11 guidelines that the association will use to settle claims.

12 (g) A member of the panel is not individually liable for an
13 act or failure to act in the performance of the official duties in
14 connection with the individual's work on the panel.

15 (h) In any review of a claim under this subchapter, and in
16 any action brought against the association under Section 2210.575,
17 the guidelines published by the commissioner under Subsection (f)
18 govern the claim and are presumed to be accurate and correct, unless
19 clear and convincing evidence supports a deviation from the
20 guidelines.

21 Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. To the extent
22 of any conflict between a provision of this subchapter and any other
23 law, the provision of this subchapter prevails.

24 Sec. 2210.580. RULEMAKING. (a) The commissioner shall
25 adopt rules regarding the provisions of this subchapter, including
26 rules concerning:

27 (1) qualifications and selection of appraisers for the

1 appraisal procedure, mediators for the mediation process, and
2 members of the expert panel;

3 (2) procedures and deadlines for the payment and
4 handling of claims by the association as well as the procedures and
5 deadlines for a review of a claim by the association;

6 (3) notice of expert panel meetings and the
7 transparency of deliberations of the panel; and

8 (4) any other matters regarding the handling of claims
9 that are not inconsistent with this subchapter.

10 (b) All rules adopted by the commissioner under this section
11 shall promote the fairness of the process, protect the rights of
12 aggrieved policyholders, and ensure that policyholders may
13 participate in the claims review process without the necessity of
14 engaging legal counsel.

15 SECTION 39. Section 2210.602(2), Insurance Code, is amended
16 to read as follows:

17 (2) "Class 1 public securities" means public
18 securities authorized to be issued before, on, or after an
19 occurrence or series of occurrences by Section 2210.072, including
20 a commercial paper program authorized before the occurrence of a
21 catastrophic event but in which [~~so long as~~] no tranche of
22 commercial paper is issued under the program until after the
23 catastrophic event.

24 SECTION 40. Section 2210.604, Insurance Code, is amended by
25 amending Subsection (a) and adding Subsection (a-1) to read as
26 follows:

27 (a) At the request of the association and with the approval

1 of the commissioner, the Texas Public Finance Authority shall issue
2 Class 1, Class 2, or Class 3 public securities. The association
3 shall submit to the commissioner a cost-benefit analysis of various
4 financing methods and funding structures when requesting the
5 issuance of public securities under this subsection.

6 (a-1) The association and the commissioner must approve
7 each tranche of commercial paper issued under a commercial paper
8 program established under this chapter.

9 SECTION 41. Section 2210.608, Insurance Code, is amended by
10 adding Subsection (c) to read as follows:

11 (c) Notwithstanding Subsection (a)(2), the proceeds from
12 public securities issued under Section 2210.072 before an
13 occurrence or series of occurrences that results in incurred
14 losses, including investment income, may not be used to purchase
15 reinsurance for the association.

16 SECTION 42. Section 2210.609(b), Insurance Code, is amended
17 to read as follows:

18 (b) The board shall notify the association of the amount of
19 the public security obligations and the estimated amount of public
20 security administrative expenses, if any, each calendar year in a
21 period sufficient, as determined by the association, to permit the
22 association to determine the availability of funds and assess a
23 premium surcharge if necessary.

24 SECTION 43. Section 2210.611, Insurance Code, is amended to
25 read as follows:

26 Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT
27 EARNINGS. Revenue collected in any calendar year from a premium

1 surcharge under Section 2210.613 that exceeds the amount of the
2 public security obligations and public security administrative
3 expenses payable in that calendar year and interest earned on the
4 public security obligation fund may, in the discretion of the
5 association, be:

6 (1) used to pay public security obligations payable in
7 the subsequent calendar year, offsetting the amount of the premium
8 surcharge that would otherwise be required to be levied for the year
9 under this subchapter;

10 (2) used to redeem or purchase outstanding public
11 securities; or

12 (3) deposited in the catastrophe reserve trust fund.

13 SECTION 44. Section 2210.612(b), Insurance Code, is amended
14 to read as follows:

15 (b) The association may enter financing arrangements as
16 described by Section 2210.072(d) as necessary to obtain public
17 securities issued under that section. Nothing in this subsection
18 prevents [~~shall prevent~~] the authorization and creation of one or
19 more programs for the issuance of commercial paper before the date
20 of an occurrence that results in insured losses under Section
21 2210.072(a) but in which [~~so long as~~] no tranche of commercial paper
22 is issued under a commercial paper program until after such an
23 occurrence.

24 SECTION 45. Section 2210.613, Insurance Code, is amended to
25 read as follows:

26 Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a)
27 The association shall pay Class 2 public securities issued under

1 Section 2210.073 as provided by this section. Thirty percent of the
2 cost of the public securities shall be paid through member
3 assessments as provided by this section. The association shall
4 notify each member of the association of the amount of the member's
5 assessment under this section. The proportion of the losses
6 allocable to each insurer under this section shall be determined in
7 the manner used to determine each insurer's participation in the
8 association for the year under Section 2210.052. A member of the
9 association:

10 (1) may not recoup an assessment paid under this
11 subsection through a premium surcharge or tax credit; and

12 (2) notwithstanding Section 2210.073(a), may elect to
13 pay an assessment under this subsection in a lump sum.

14 (b) Seventy percent of the cost of the public securities
15 shall be paid by a ~~[nonrefundable]~~ premium surcharge collected
16 under this section in an amount set by the commissioner. On
17 approval by the commissioner, each insurer, the association, and
18 the Texas FAIR Plan Association shall assess, as provided by this
19 section, a premium surcharge to each policyholder of a policy that
20 is in effect on or after the 180th day after the date the
21 commissioner issues notice of the approval of the public securities
22 ~~[its policyholders as provided by this section]~~. The premium
23 surcharge must be set in an amount sufficient to pay, for the
24 duration of the issued public securities, all debt service not
25 already covered by available funds and all related expenses on the
26 public securities.

27 (c) The premium surcharge under Subsection (b) shall be

1 assessed on all policyholders of policies that cover [~~who reside or~~
2 ~~have operations in, or whose~~] insured property that is located in a
3 catastrophe area, including automobiles principally garaged in a
4 catastrophe area. The premium surcharge shall be assessed on [~~for~~]
5 each Texas windstorm and hail insurance policy and each property
6 and casualty insurance policy, including an automobile insurance
7 policy, issued for automobiles and other property located in the
8 catastrophe area. A premium surcharge under Subsection (b) applies
9 to:

10 (1) all policies written under the following lines of
11 insurance:

12 (A) fire and allied lines;

13 (B) farm and ranch owners;

14 (C) residential property insurance;

15 (D) private passenger automobile liability and
16 physical damage insurance; and

17 (E) commercial passenger automobile liability
18 and physical damage insurance; and

19 (2) the property insurance portion of a commercial
20 multiple peril insurance [~~that provide coverage on any premises,~~
21 ~~locations, operations, or property located in the area described by~~
22 ~~this subsection for all property and casualty lines of insurance,~~
23 ~~other than federal flood insurance, workers' compensation~~
24 ~~insurance, accident and health insurance, and medical malpractice~~
25 ~~insurance]~~.

26 (d) A premium surcharge under Subsection (b) is a separate
27 [~~nonrefundable~~] charge in addition to the premiums collected and is

1 not subject to premium tax or commissions. Failure by a
2 policyholder to pay the surcharge constitutes failure to pay
3 premium for purposes of policy cancellation.

4 SECTION 46. Sections 2210.6135(a) and (c), Insurance Code,
5 are amended to read as follows:

6 (a) The association shall pay Class 3 public securities
7 issued under Section 2210.074 as provided by this section through
8 member assessments. The association, for the payment of the
9 losses, shall assess the members of the association an amount not to
10 exceed \$500 million per catastrophe year [~~for the payment of the~~
11 ~~losses~~]. The association shall notify each member of the
12 association of the amount of the member's assessment under this
13 section.

14 (c) A member of the association:

15 (1) may not recoup an assessment paid under this
16 section through a premium surcharge or tax credit; and

17 (2) notwithstanding Section 2210.074(a), may elect to
18 pay an assessment under this section in a lump sum.

19 SECTION 47. Subchapter A, Chapter 2301, Insurance Code, is
20 amended by adding Section 2301.010 to read as follows:

21 Sec. 2301.010. CONTRACTUAL LIMITATIONS PERIOD AND CLAIM
22 FILING PERIOD IN CERTAIN PROPERTY INSURANCE FORMS. (a) This
23 section applies only to an insurer that issues windstorm and hail
24 insurance in the catastrophe area, as defined by Section 2210.003.

25 (b) Notwithstanding Section 16.070, Civil Practice and
26 Remedies Code, and for the purpose described by Section
27 2210.053(b), a policy form or printed endorsement form for

1 residential or commercial property insurance that is filed by an
2 insurer described by Subsection (a) or adopted by the department
3 under this subchapter for use by an insurer described by Subsection
4 (a) may provide for a contractual limitations period for filing
5 suit on a first-party claim under the policy. The contractual
6 limitations period may not end before the earlier of:

7 (1) two years from the date the insurer accepts or
8 rejects the claim; or

9 (2) three years from the date of the loss that is the
10 subject of the claim.

11 (c) A policy or endorsement described by Subsection (b) may
12 also contain a provision requiring that a claim be filed with the
13 insurer not later than one year after the date of the loss that is
14 the subject of the claim. A provision under this subsection must
15 include a provision allowing the filing of claims after the first
16 anniversary of the date of the loss for good cause shown by the
17 person filing the claim.

18 (d) A contractual provision contrary to Subsection (b) or
19 (c) is void. If a contractual provision is voided under this
20 subsection, the voiding of the provision does not affect the
21 validity of other provisions of a contract that may be given effect
22 without the voided provision to the extent those provisions are
23 severable.

24 (e) The department, to encourage the authorized insurers to
25 write windstorm and hail insurance in the catastrophe area, as
26 defined by Section 2210.003, and in other areas of the state, may
27 approve policy or contractual provisions other than those described

1 by Subsections (b) and (c) that are consistent with sound
2 underwriting and insurance principles, provided that the policy or
3 contractual provisions meet the requirements of Sections
4 2301.007(a) and 2301.053.

5 (f) An insurer using a policy form or endorsement form in
6 this state that includes a provision described by Subsection (b) or
7 (c) shall, at the time the policy or endorsement is issued or
8 renewed, disclose in writing to an applicant or insured the
9 contractual limitations or claims filing period, as applicable, in
10 the policy or endorsement.

11 SECTION 48. Chapter 1001, Occupations Code, is amended by
12 adding Subchapter N to read as follows:

13 SUBCHAPTER N. WINDSTORM-RELATED DESIGN SERVICES

14 Sec. 1001.651. DEFINITIONS. In this subchapter:

15 (1) "Association" means the Texas Windstorm Insurance
16 Association.

17 (2) "Plan of operation" means the plan of operation of
18 the association.

19 (3) "Windstorm certification standards" means the
20 building specifications and building codes applicable to insurable
21 property under Subchapter F, Chapter 2210, Insurance Code, and the
22 plan of operation, and applicable rules of the Texas Department of
23 Insurance.

24 Sec. 1001.652. QUALIFICATIONS; ROSTER. (a) The board
25 shall:

26 (1) review the plan of operation and the windstorm
27 certification standards; and

1 (2) in consultation with the Texas Department of
2 Insurance, adopt rules establishing criteria for determining
3 whether an engineer possesses the knowledge, understanding, and
4 professional competence to be qualified to provide engineering
5 design services related to compliance with applicable windstorm
6 certification standards under Subchapter F, Chapter 2210,
7 Insurance Code.

8 (b) The board shall prepare and publish a roster of
9 engineers who satisfy the criteria adopted under Subsection (a)(2)
10 and shall make the roster available to the public without cost in an
11 online computer database format.

12 Sec. 1001.653. COMPLIANCE WITH BUILDING CODES;
13 ENFORCEMENT. (a) The board, in consultation with the Texas
14 Department of Insurance, shall adopt rules requiring an engineer
15 who is providing engineering design services to comply with
16 windstorm certification standards.

17 (b) The board may inspect a structure to ensure an
18 engineer's compliance with Subsection (a).

19 (c) If the board determines that an engineer's engineering
20 design services related to windstorm certification standards do not
21 comply with the standards, the board may:

22 (1) issue an emergency order prohibiting the engineer
23 from entering into a contract to provide design services related to
24 compliance with applicable windstorm certification standards for a
25 period not to exceed 30 days;

26 (2) remove the engineer from the roster described by
27 Section 1001.652(b); or

1 (3) determine that a structure was not constructed,
2 altered, remodeled, enlarged, repaired, or added to according to
3 the applicable windstorm certification standards and report that
4 finding to the association and the Texas Department of Insurance.

5 (d) The board shall give the engineer notice of any action
6 under this section.

7 (e) A violation of this subchapter, including a violation of
8 the windstorm inspection standards, is grounds for disciplinary
9 action under Section 1001.452.

10 SECTION 49. Sections 2210.551(e) and 2210.552, Insurance
11 Code, are repealed.

12 SECTION 50. Section 2301.010, Insurance Code, as added by
13 this Act, applies only to an insurance policy that is delivered,
14 issued for delivery, or renewed on or after January 1, 2012. A
15 policy delivered, issued for delivery, or renewed before January 1,
16 2012, is governed by the law as it existed immediately before the
17 effective date of this Act, and that law is continued in effect for
18 that purpose.

19 SECTION 51. Not later than December 1, 2011, the Texas Board
20 of Professional Engineers shall adopt rules to implement Subchapter
21 N, Chapter 1001, Occupations Code, as added by this Act.

22 SECTION 52. (a) A legislative interim study committee
23 shall conduct a study of alternative ways to provide insurance to
24 the seacoast territory of this state through a quasi-governmental
25 entity.

26 (b) The committee is composed of 12 members appointed as
27 follows:

1 (1) four members of the senate appointed by the
2 lieutenant governor, two of whom represent one or more first tier
3 coastal counties and two of whom do not represent a first tier
4 coastal county;

5 (2) four members of the house of representatives
6 appointed by the speaker of the house of representatives, two of
7 whom represent one or more first tier coastal counties and two of
8 whom do not represent a first tier coastal county; and

9 (3) four public members with a background in actuarial
10 science, law, business, or insurance, as follows:

11 (A) two members who do not reside in a first tier
12 coastal county, appointed by the governor;

13 (B) one member who resides in a first tier
14 coastal county, appointed by the lieutenant governor; and

15 (C) one member who resides in a first tier
16 coastal county, appointed by the speaker of the house of
17 representatives.

18 (c) The speaker of the house of representatives and the
19 lieutenant governor shall jointly designate a chair or,
20 alternatively, designate two co-chairs, from among the committee
21 membership, one of whom represents or resides in a first tier
22 coastal county.

23 (d) The committee shall:

24 (1) examine alternative ways to provide insurance to
25 the seacoast territory of this state through a quasi-governmental
26 entity, including providing insurance coverage through a system or
27 program in which insurers in this state provide insurance in the

1 seacoast territory of this state in proportion to the percentage of
2 insurance coverage provided in geographic areas of this state other
3 than the seacoast territory;

4 (2) study the residual markets for windstorm and hail
5 insurance in other states to determine if those markets operate
6 more efficiently and effectively than the residual market for
7 windstorm and hail insurance coverage in this state;

8 (3) study windstorm-related building codes and
9 mitigation strategies to determine which codes or strategies are
10 most effective;

11 (4) recommend:

12 (A) the appropriate scope of authority and
13 responsibility for the entity to provide insurance to the seacoast
14 territory of this state;

15 (B) an organizational structure to exercise
16 authority and responsibility over the provision of insurance to the
17 seacoast territory of this state;

18 (C) a timetable for implementation; and

19 (D) specific amendments to state laws and rules
20 that are necessary to implement the committee's recommendations
21 under this subdivision; and

22 (5) estimate funding requirements to implement the
23 recommendations.

24 (e) The committee may adopt rules necessary to conduct
25 business under and implement this section.

26 (f) Except as specifically provided by this section, the
27 committee may operate in the same manner as a joint committee of the

1 82nd Legislature.

2 (g) Not later than December 1, 2012, the committee shall
3 report to the governor and the legislature the recommendations made
4 under this section.

5 (h) This section expires June 1, 2013.

6 SECTION 53. (a) The name of the Texas Windstorm Insurance
7 Association is changed to the Texas Coastal Insurance Plan
8 Association.

9 (b) A reference in law to the Texas Windstorm Insurance
10 Association or the Texas Windstorm Insurance Association Act means
11 the Texas Coastal Insurance Plan Association or the Texas Coastal
12 Insurance Plan Act, respectively.

13 SECTION 54. (a) Except as otherwise specifically provided
14 by this section, this Act applies only to a Texas windstorm and hail
15 insurance policy, and to a dispute under a Texas windstorm and hail
16 insurance policy, that is delivered, issued for delivery, or
17 renewed by the Texas Windstorm Insurance Association on or after
18 the 60th day after the effective date of this Act. A Texas
19 windstorm and hail insurance policy, and a dispute under a Texas
20 windstorm and hail insurance policy, that is delivered, issued for
21 delivery, or renewed by the Texas Windstorm Insurance Association
22 before the 60th day after the effective date of this Act is governed
23 by the law in effect immediately before the effective date of this
24 Act, and the former law is continued in effect for that purpose.

25 (b) The deadline to file a claim under a Texas windstorm and
26 hail insurance policy delivered, issued for delivery, or renewed
27 before the effective date of this Act by the Texas Windstorm

1 Insurance Association is governed by the law in effect on the date
2 the policy under which the claim is filed was delivered, issued for
3 delivery, or renewed, and that law is continued in effect for that
4 purpose.

5 (c) If a person insured by the Texas Windstorm Insurance
6 Association disputes the amount the association will pay for a
7 partially or fully accepted claim filed by the person, Section
8 2210.574, Insurance Code, as added by this Act, applies only if the
9 claim is filed on or after the 60th day after the effective date of
10 this Act.

11 (d) If a person insured by the Texas Windstorm Insurance
12 Association disputes the amount the association will pay for a
13 partially or fully accepted claim filed by the person and the claim
14 is filed before the 60th day after the effective date of this Act:

15 (1) Section 2210.574, Insurance Code, as added by this
16 Act, does not apply to the resolution of the dispute; and

17 (2) notwithstanding Section 2210.574, Insurance Code,
18 as added by this Act, or any other provision of this Act, the
19 claimant must attempt to resolve the dispute through the appraisal
20 process contained in the association policy under which the claim
21 is filed before an action may be brought against the Texas Windstorm
22 Insurance Association concerning the claim.

23 (e) The person insured by the Texas Windstorm Insurance
24 Association and the association may agree that an appraisal
25 conducted under Subsection (d)(2) of this section is binding on the
26 parties.

27 (f) An action brought against the association concerning a

1 claim described by Subsection (d) of this section shall be abated
2 until the appraisal process under Subsection (d)(2) of this section
3 is completed.

4 (g) Notwithstanding Sections 2210.575 and 2210.576,
5 Insurance Code, as added by this Act, Subsection (b) of this
6 section, or any other provision of this Act, Sections
7 2210.576(b)(1)-(3), Insurance Code, apply to any cause of action
8 that accrues against the Texas Windstorm Insurance Association on
9 or after the effective date of this Act and the basis of which is a
10 claim filed under a Texas windstorm and hail policy that is
11 delivered, issued for delivery, or renewed by the association,
12 regardless of the date on which the policy was delivered, issued for
13 delivery, or renewed.

14 SECTION 55. The Texas Windstorm Insurance Association shall
15 amend the association's plan of operation to conform to the changes
16 in law made by this Act not later than the 60th day after the
17 effective date of this Act.

18 SECTION 56. If any provision of this Act or its application
19 to any person or circumstance is held invalid, the invalidity does
20 not affect other provisions or applications of this Act that can be
21 given effect without the invalid provision or application, and to
22 this end the provisions of this Act are severable.

23 SECTION 57. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect on the 91st day after the last day of

1 the legislative session.